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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JOSE F., a Person Coming Under the
Juvenile Court Law.

B239335
(Los Angeles County
Super. Ct. No. PJ47437)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Benjamin R. Campos, Juvenile Court Referee. Modified with directions.

Sarah A. Stockwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Chung L. Mar and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

The Los Angeles County District Attorney filed three petitions against minor Jose F. in Los Angeles County Superior Court case No. PJ47437. (Welf. & Inst. Code, § 602.) After the juvenile court found some of the allegations true, and minor admitted other allegations, the juvenile court placed minor in a camp-community placement program for six months. The juvenile court declared a maximum confinement time of eight years six months. Minor was awarded 12 days of presentence credit for his detention after February 6, 2012.

Minor appeals on the grounds that: (1) the juvenile court erred in calculating minor's precommitment custody credits, and (2) the juvenile court utilized the incorrect standard of proof in making its true finding, and the prosecution failed to prove beyond a reasonable doubt that minor possessed the loaded weapon.

FACTUAL AND PROCEDURAL HISTORY

On January 5, 2011, the district attorney filed a petition alleging that minor committed the crimes of second degree burglary of a vehicle in violation of Penal Code section 459¹ (count 1) and misdemeanor vandalism in violation of section 594, subdivision (a). Minor agreed to admit to count 1, which was declared a felony, and count 2 was dismissed. The court placed minor on probation for a period of 12 to 36 months under terms and conditions of probation. Minor was granted deferred entry of judgment pursuant to Welfare and Institutions Code section 790, subdivision (a).² The juvenile court granted minor predisposition credits of two days. There is no reporter's transcript revealing the facts for these offenses, but a probation report states that minor and his brother were found sitting in a car by the car's owner. The two boys ran when confronted, and the owner later saw a broken window in the car.

On August 8, 2011, the district attorney filed a petition alleging that minor committed the crime of assault with a firearm in violation of section 245, subdivision

¹ All further references to statutes are to the Penal Code unless stated otherwise.

² On October 4, 2011, the order for deferred entry of judgment was revoked.

(a)(2). It was alleged that the offense was committed for the benefit of, at the direction of, and in association with a criminal street gang under section 186.22, subdivision (b)(1)(A). The petition was amended to add a second count of making criminal threats in violation of section 422. A gang allegation was alleged in this count as well. According to the probation report, a pedestrian told police that three males had brandished a gun at him at a bus stop where he waited with his daughter. Responding officers searched and found minor and a companion in the area. They began to run when officers approached. The victim identified them as the perpetrators and said that minor's companion pointed the gun at him. When the victim was first approached, minor yelled gang slogans and made threats.

Before the date was set for adjudication on the filed petitions, on December 8, 2011, the district attorney filed a petition alleging that on September 28, 2011, minor possessed a firearm in violation of section 12101, subdivision (a)(1) (count 1) and possessed live ammunition in violation of section 12101, subdivision (b)(1) (count 2). Minor denied the allegations.³

An adjudication hearing was held on February 6, 2012. At its conclusion, minor was declared a ward of the court under Welfare and Institutions Code section 602. The juvenile court found true the allegation that minor possessed the gun and ammunition. Minor admitted to count 2 of the August 8, 2011 petition as a felony (making criminal threats) as well as the gang enhancement for that count. Count 1 of that petition was dismissed. A petition filed on February 6, 2012, was dismissed.⁴ Minor was placed in the camp-community placement program for the midterm of six months.

³ The facts of this incident are related *infra*.

⁴ The record indicates that on the same day as the hearing, minor was charged with a violation of section 243.2, subdivision (a), battery on school, park, or hospital property. The People dismissed the charge with a *Harvey* waiver at the disposition hearing. (See *People v. Munoz* (2007) 155 Cal.App.4th 160, 166-167; *People v. Harvey* (1979) 25 Cal.3d 754, 758.)

I. Credit Days

Minor argues that the juvenile court inaccurately calculated the number of days he spent in custody. He asserts that the court ignored the days he spent in custody at the time of his earlier arrests. Minor contends that he is entitled to five more days of custody credit, and respondent agrees.

Juveniles are entitled to precommitment credit for time spent in custody. (*In re Eric J.* (1979) 25 Cal.3d 522, 535-536; *In re Ricky H.* (1981) 30 Cal.3d 176, 184.) Section 2900.5, subdivision (b) provides for custody days to be credited when the time in custody is attributable to the same conduct for which a defendant has been convicted. (See *In re Ricky H.*, at p. 185.) In this case, the sentencing court granted minor 12 custody days for his most recent detention. Without citation to the record, minor asserts he also spent two days in custody in November 2010, one day in June 2011, and two days in October 2011, and he should receive five more credit days accordingly.

Our examination of the record shows that the juvenile court granted minor predisposition credits of two days in relation to the January 5, 2011 petition, which related to his November 2010 detention. The three-year maximum confinement time for the offense in that petition was included in the final disposition; hence minor is entitled to these two credit days. With respect to the August 8, 2011 petition, minor was arrested and released on the day he committed the offense (making criminal threats) alleged in that petition—June 8, 2011. Since minor was taken into custody, he is entitled to another day of credit. On October 4, 2011, minor was arrested for the possession of a firearm charge. The minute order for October 4, 2011, states that minor “remains released.” However, on October 5, 2011, minor apparently reported to “intake detention control” and surrendered. Therefore, giving minor the benefit of the doubt, minor is entitled to two more days of custody credit based on this incident.

Minor is entitled to five additional days of custody credit, and the minute order of disposition must be amended accordingly.

II. Juvenile Court's Standard for True Finding; Sufficiency of the Evidence

A. Minor's Argument

Minor argues that the juvenile court never declared the allegations in the petition true beyond a reasonable doubt. Instead, the court's language indicated that it used the preponderance of the evidence standard of proof. Minor further argues that the evidence was insufficient to demonstrate proof beyond a reasonable doubt that he possessed the weapon.

B. Relevant Authority

The reasonable doubt standard is constitutionally required in both criminal prosecutions and juvenile delinquency adjudications. (*In re Winship* (1969) 397 U.S. 358, 368; see *In re Eddie M.* (2003) 31 Cal.4th 480, 503.) "The trier of fact, not the appellate court, must be convinced of the minor's guilt, and if the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*In re James B.* (2003) 109 Cal.App.4th 862, 872; see *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) "The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.]" (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

A single witness's testimony is sufficient to support a conviction, unless it is physically impossible or inherently improbable. (*People v. Young* (2005) 34 Cal.4th 1149, 1181; *People v. Scott* (1978) 21 Cal.3d 284, 296; Evid. Code, § 411.) "Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge . . . to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

C. Pertinent Facts of December 8, 2011 Petition

Libier Soltero, a police officer with the Los Angeles Unified School District, was patrolling near Sylmar High School on September 28, 2011, at approximately 3:45 p.m. She and her partner, George Florez, were in uniform and in a marked police vehicle. Officer Soltero saw minor and his brother, Juan, walking toward them. Both minor and Juan looked at the officers, looked at each other, and began walking more rapidly than they had been. Officer Soltero saw that both boys' hands were going towards their waistbands. Their hands were under their baggy T-shirts and they were "messaging" with the belt area. When the two brothers turned down Dronfield Street, the two officers followed them in their patrol car.

The officers got out of their car and stopped Juan to speak to him regarding a different matter. Minor walked to the opposite side of the street where he ducked down behind a parked car. As Officer Florez made contact with Juan, Officer Soltero noticed that minor "was disposing of an object while he was behind the vehicle." She saw him pull the object from his waistband as he faced toward the officers. Officer Soltero could see his feet and his body up to his arms. Then he began running. Officer Soltero later checked the area where minor had been crouching and discovered a loaded handgun. It was right behind the rear tire. There was no one else walking on that street.

Officer Soltero called for backup but the officers could not locate minor. On October 4, 2011, Officer Florez arrested minor. Minor was read his *Miranda*⁵ rights. Before Officer Florez mentioned the gun incident, minor said, "If you are talking about the gun, it wasn't mine." Officer Florez acknowledged that he did not know if another officer had discussed with minor the reason for his being stopped. The gun was examined for fingerprints, but no fingerprints on the gun matched minor's fingerprints.

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

D. Juvenile Court's Ruling

In sustaining the allegation of gun possession, the juvenile court stated: “All right. It just seems to me the issue of whether or not a gun was recovered is not in dispute. The issue of where it was recovered from is not in dispute. The only issue is, did the minor place the gun there? And it seems like we don’t see anything of value laying on the ground at an area—something like a gun is not expected to be in an area like that. And the officer testified that she saw the minor bend down, immediately depart from his brother, when they were going to stop his brother. The likelihood is—of course, I don’t know. There was no evidence presented, but there was a fingerprint on the gun. I am wondering whether the fingerprint of his brother might have matched the gun. What in my opinion more than likely happened is that his brother knew he was going to be arrested, he handed the gun surreptitiously to Jose. Jose went across the street and put the gun down by the car. So the petition is going to be sustained.”

E. Analysis

At the outset, we disagree with minor’s claim that the juvenile court employed an incorrect standard of proof. As noted, since the 1970 decision in *In re Winship, supra*, 397 U.S. 358, the reasonable doubt standard for juvenile cases has been in effect. (See *In re Andre G.* (1989) 210 Cal.App.3d 62, 65.) Failure to articulate the standard of review is deemed error only where “either a new standard of proof has been recently announced or the applicable standard is unclear.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547-548, 549; cf. *In re Marshall K.* (1970) 14 Cal.App.3d 94, 101.) When a trial court does not articulate the standard used, we presume it has applied the proper standard. (*In re Andre G.*, at p. 65.) This presumption is bolstered, as in *Andre G.*, by defense counsel’s argument that the People had not proved beyond a reasonable doubt that minor had possessed the firearm. (*Ibid.*)

Moreover, the juvenile court’s reasoning shows that it found minor guilty beyond a reasonable doubt. The court stated that the issue of whether there was a gun and where it was recovered were not in dispute. As for the issue of whether minor placed the gun

there, the court noted that a gun was not to be expected in the area where it was found. Officer Soltero testified that she saw minor separate from his brother when it appeared his brother was to be stopped, and she saw minor bend down. The juvenile court theorized that Juan knew he was going to be arrested, and he handed the gun surreptitiously to minor. Minor went across the street and put the gun down by the car. The juvenile court clearly found beyond a reasonable doubt that minor possessed the gun, and any speculation was confined to how minor acquired the gun.

Furthermore, we believe the evidence was sufficient to support the juvenile court's true finding on the allegation. As noted, no one else was on the street where minor was located. He and his brother were aware of being followed by police, and the officers saw them both moving their hands to their waistbands. As soon as they turned the corner, the boys separated, and Officer Soltero saw minor crouch down behind a car and again move his hand in the area of his waistband. Officer Soltero testified that she saw minor "disposing of an object" while he crouched behind the car. Minor got up and left, and the gun was found in the spot where minor had crouched down. The fact that his fingerprints were not found on the weapon does not invalidate the true finding. "Viewing the record as a whole and presuming the existence of every fact the trier of fact could reasonably deduce from the evidence," we believe the evidence was sufficient to sustain the allegation. (*People v. Romero* (2008) 44 Cal.4th 386, 400.) "Even if the evidence could be reconciled with a different finding, that does not justify a conclusion that the [true finding] was not supported by the evidence, nor does it warrant a reversal." (*Ibid.*)

DISPOSITION

The order appealed from is modified to grant minor five additional days of custody credit. In all other respects, the order is affirmed. The superior court is directed to amend the minute order of disposition to reflect the correct number of credit days.

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_____, P. J.
BOREN

We concur:

_____, J.
ASHMANN-GERST

_____, J.
CHAVEZ